

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GRACE, *et al.*

Plaintiffs,

v.

MATTHEW G. WHITAKER, in his
Official capacity as Acting Attorney
General of the United States, *et al.*,

Defendants.

Civil Action No. 1:18-cv-01853-EGS

DEFENDANTS' STATUS UPDATE

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Dated: January 11, 2019

Attorneys for Defendants

DEFENDANTS' STATUS UPDATE

Defendants respectfully submit this status update, consistent with the Court's order that Defendants "file a further status report by no later than January 11, 2019." January 4, 2019 Minute Order.

Since the January 4, 2019, update, counsel for Defendants have continued to confer with counsel for Plaintiffs by phone and email to work out the logistics of returning the removed Plaintiffs to the United States. The Department of Homeland Security ("DHS") has informed counsel from the Department of Justice ("DOJ") that officers for Immigration and Customs Enforcement ("ICE") have worked with the points of contact provided for each removed Plaintiff and have communicated the requirements for their return. DHS has informed DOJ that ICE officers have also reached out to the governments of El Salvador and Honduras to determine the legal requirements with which Plaintiffs must comply to depart those countries. DHS has informed DOJ that ICE officers have informed Plaintiffs' counsel that both countries require that those seeking to depart present a passport. DHS has informed DOJ that three of the removed Plaintiffs (one from El Salvador and the family unit from Honduras) do not currently have the proper passport document. DHS has informed DOJ that both countries also require permission from both parents for a child to travel outside the country. DHS has informed DOJ that the family unit in El Salvador meets an exception to the requirement, but that the family unit from Honduras must comply with the requirement. DHS has informed DOJ that ICE officers continue to work with the points of contact and the governments of El Salvador and Honduras to facilitate Plaintiffs' obtaining the documents their countries require in order for them to travel. DHS has informed DOJ that three of the removed Plaintiffs appear to have the documents necessary to depart, and that Defendants are prepared to schedule their return.

The parties have been unable to come to an agreement as to the process that should be applied to the Plaintiffs once they are returned to U.S. soil. The Court's order directs

defendants to bring back into the United States, at no expense to plaintiffs, any plaintiff who has been removed pursuant to an expedited removal order prior to this Order and parole them into the United States, and provide each of them a new credible fear process consistent with the Court's Memorandum Opinion and free from the unlawful policies enumerated in paragraphs 1.a. through 1.f. above or, in the alternative, full immigration court removal proceedings pursuant to 8 U.S.C. § 1229a.

ECF No. 105 at 3-4. This language requires that the removed Plaintiffs be allowed to reenter the country and then be provided a new credible fear process. Section 1225(b), the only provision that provides for a credible fear process, contemplates that those subject to expedited removal are detained until they are removed or until they are granted asylum. Under 8 C.F.R. § 235.3(b)(4)(ii), "[p]ending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained." This follows from the statute's requirement that an applicant found to have a credible fear "shall be detained" while the asylum application is pending before an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(ii). If Plaintiffs establish a credible fear, they will be considered for release from detention under governing law and policy. *See* ICE Directive 11002.1, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009); *Matter of X-K-*, 23 I. & N. Dec. 731 (BIA 2005). Defendants think the Court's order to provide Plaintiffs with new credible fear interviews envisions utilizing the status quo credible fear screening and detention regime (to be conducted without regard to the enjoined aspects of *Matter of A-B-* and the Policy Memo), and does not require a unique process whereby Plaintiffs would be released prior to the conduct of a credible fear screening other than in accordance with the established procedures for release from custody. Defendants' counsel have been negotiating with Plaintiffs' counsel regarding a time frame for

completing credible fear processing, in order to ensure that those Plaintiffs who establish a credible fear will have an opportunity to be promptly considered for release from custody consistent with 8 U.S.C. § 1225(b).

Defendants' counsel continue to work with Plaintiffs' counsel to facilitate return and will provide an additional status update to the Court regarding those efforts by Friday, January 18, 2019.

Respectfully submitted,

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WILLIAM C. PEACHEY
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EREZ REUVENI
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

By: /s/ Christina P. Greer
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